

#### § 405.722

(c) Such person or his representative has filed a written request for a hearing in accordance with the procedure described in § 405.722; and

(d) The amount in controversy is \$100 or more.

[40 FR 1025, Jan. 6, 1975. Redesignated at 42 FR 52826, Sept. 30, 1977]

#### **§ 405.722 Time and place of filing request for a hearing.**

The request for a hearing shall be made in writing and filed at an office of the Social Security Administration or the Health Care Financing Administration or with a presiding officer, or, in the case of a qualified railroad retirement beneficiary, at an office of the Railroad Retirement Board. Such request must be filed within 60 days after the date of receipt of notice of the reconsidered determination by such individual, except where the time is extended as provided in 20 CFR 404.933(c). For purposes of this section, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[45 FR 73933, Nov. 7, 1980]

#### **§ 405.724 Departmental Appeals Board review.**

Departmental Appeals Board review is provided by 20 CFR 404.967.

[45 FR 73933, Nov. 7, 1980, as amended at 61 FR 32348, June 24, 1996]

#### **§ 405.730 Court review.**

To the extent authorized by section 1869, section 1876(f), and section 1879(d) of the Act, a party to a decision of the Departmental Appeals Board (see 20 CFR 404.979) or the decision of a presiding officer where the request for review by the Departmental Appeals Board was denied, may obtain a court review where the amount in controversy after Departmental Appeals Board review is \$1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see 20 CFR 422.210 for the filing procedure). A party to a reconsidered determination may obtain a court review where the amount in controversy is \$1,000 or more

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and he requests and meets the conditions for the expedited appeals process (see § 405.718).

[45 FR 73933, Nov. 7, 1980, as amended at 61 FR 32348, June 24, 1996]

#### **§ 405.740 Principles for determining the amount in controversy.**

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a hearing (\$100), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more providers to meet the \$100 hearing threshold and a single provider may aggregate claims for services provided to one or more beneficiaries to meet the \$100 hearing threshold.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s).

(4) When requesting a hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified below, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for a hearing (\$100). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the intermediary and less any deductible and coinsurance

amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different provider(s) if the claims involve common issues of law and fact;

(ii) Two or more providers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary; or

(iii) Two or more providers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been reconsidered and a request for hearing has been made within 60 days after receipt of the reconsideration determination(s). Moreover, in the request for hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is \$100 or more is made by the administrative law judge (ALJ).

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ also makes the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review (\$1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under §411.400 of this chapter or the liability of the beneficiary for those services is limited under §411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any de-

ductible and coinsurance amounts applicable in the particular case, had such expenses not been paid pursuant to §411.400 of this chapter or had such liability not been limited pursuant to §411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a hearing. HMO, CMP and HCPP appellants under part 417 of this chapter may combine part A and part B claims together to meet the requisite amounts in controversy for a hearing.

[59 FR 12181, Mar. 16, 1994]

**§ 405.745 Amount in controversy ascertained after reconsideration.**

For the purpose of determining whether a party to a reconsidered determination is entitled to a hearing, the amount in controversy after the reconsideration action rather than the amount in controversy initially at issue shall be controlling.

[40 FR 1026, Jan. 6, 1975. Redesignated at 42 FR 52826, Sept. 30, 1977]

**§ 405.747 Dismissal of request for hearing; amount in controversy less than \$100.**

The presiding officer shall, without holding a hearing, dismiss the request for hearing if the request for hearing plainly shows that less than \$100 is in controversy. If a hearing is held and the presiding officer finds that the amount in controversy is less than \$100, the presiding officer shall dismiss the request for hearing and will not rule on the substantive issues involved in the appeal.

**§ 405.750 Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of a presiding officer or the Departmental Appeals Board; finality of determinations and decisions.**

(a) *Reopenings concerning applications and entitlement.* A determination, or decision, or revised determination or decision made by the Social Security Administration concerning any matter under §405.704(a), may be reopened and revised under 20 CFR 404.988 (Conditions for reopening).